

NO. 46241-9-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

JOSHUA L. HUNTER,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR LEWIS COUNTY

The Honorable James W. Lawler, Judge
The Honorable Nelson Hunt, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court committed reversible error by failing to permit Mr. Hunter to self-represent after all evidence was admitted but before closing argument.

2. The trial court committed reversible error by failing to engage Mr. Hunter in a self-representation colloquy before denying his request to self-represent.

B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

Did the trial court commit reversible error by (1) failing to permit Mr. Hunter to self-represent after all evidence was admitted but before closing argument and by (2) failing to engage Mr. Hunter in a self-representation colloquy before denying his request to self-represent?

C. STATEMENT OF THE CASE

1. Procedural History

By amended information, the state charged Joshua Hunter with Attempting to Elude a Pursuing Police Vehicle¹ and Driving Under the Influence (DUI).² CP 1-2. A Lewis County jury found Mr. Hunter guilty of Attempting to Elude but acquitted him of DUI. RP Trial Day 2 at 168;

¹ RCW 46.61.024

² RCW 46.61.502(5)

CP 4, 5. The court sentenced Mr. Hunter to 22 months in prison. RP Sentencing at 11; CP 10. Mr. Hunter appeals all portions of his judgment and sentence. CP 17-28.

2. Trial Testimony

On August 17, 2013, Lewis County Sheriff's Deputy Susan Shannon was driving toward Morton on State Route (SR) 7 when she saw a car off the shoulder with its brake lights on. RP Trial Day 1 at 32, 35. It was 1:40 a.m. The area was dark and remote. RP Trial Day 1 at 35, 38. Morton Police Officer Perry Royle was Deputy Shannon's passenger. RP Trial Day 1 at 35, 69-70. Officer Royle noted the car's license plate. RP Trial Day 1 at 35.

The car pulled onto SR 7 after Deputy Shannon passed it. RP Trial Day 1 at 37. Deputy Shannon noticed the car traveled slowly. RP Trial Day 1 at 37. She stopped in a parking lot and turned off her lights. RP Trial Day 1 at 37. The car drove past her at an estimated 10 to 15 miles per hour as it entered a 35 mile per hour zone. RP Trial Day 1 at 38. The car's lights went out as it passed the officers. Deputy Shannon watched the car abruptly accelerate and stop several times. RP Trial Day 1 at 38-39. She pulled in behind the car and used her red and blue and gold lights to signal the driver to stop. RP Trial Day 1 at 39. Deputy Shannon was driving a standard police cruiser with Lewis County Sheriff's Department

logos on the doors. Both she and Officer Royle were dressed in their Department-approved uniforms. RP Trial Day 1 at 33-34, 72, 74.

The car traveled about four blocks before pulling over to the right. It was doing about five to ten miles per hour. RP Trial Day 1 at 40. The car door opened immediately. RP Trial Day 1 at 40. The driver, Joshua Hunter, started to get out. Officer Royle ordered him to remain in the car. RP Trial Day 1 at 40-41. Both Deputy Shannon and Officer Royle noted the driver was wearing nothing above his waist. RP Trial Day 1 at 41, 70.

Mr. Hunter leaned back toward Deputy Shannon and said, "Hello. Hello. I just wanted to stop and say hello. Okay. Hello. I have to go now." RP Trial Day 1 at 42. He had a big smile and seemed over the top happy. RP Trial Day 1 at 42.

Deputy Shannon asked Mr. Hunter three or four times to step out of the car. The car was still running. RP Trial Day 1 at 43. She thought there was something wrong with Mr. Hunter. She suspected he was high. RP Trial Day 1 at 43. Mr. Hunter stepped from the car. He was completely naked. RP Trial Day 1 at 44. Deputy Shannon told Mr. Hunter he was not free to leave. RP Trial Day 1 at 44. She asked him to step to the back of the car. She offered him a blanket. RP Trial Day 1 at 44. She noted he was sweaty, flush, and glassy-eyed. Mr. Hunter said he

was having serious problems with God but had talked to Him and worked it out. He just needed to get home. RP Trial Day 1 at 45.

Mr. Hunter sat down in his car. RP Trial Day 1 at 46. Deputy Shannon walked up to the driver's door yelling at Mr. Hunter that he was not free to leave and to turn off the car or she would taze him. RP Trial Day 1 at 46. Deputy Shannon heard the car's engine accelerate but because it was in park, it did not move. She fired her taser hitting Mr. Hunter's left bicep with one of the taser's two probes. RP Trial Day 1 at 47. Mr. Hunter asked, "Why did you do that?" RP Trial Day 1 at 47, 49. Mr. Hunter put the car in gear and accelerated into the roadway. Deputy Shannon avoided harm by jumping away from the car as it pulled out. RP Trial Day 1 at 49.

Deputy Shannon and Officer Royle ran back to their car and drove after Mr. Hunter with the patrol lights on and flashing. RP Trial Day 1 at 50, 53. Mr. Hunter made no effort to stop at a stop sign and turned onto SR 12. The officers followed Mr. Hunter for many miles as he passed through various towns and headed toward White Pass. At times, he reached speeds of up to 90 miles per hour. He passed a car in a double-yellow no-passing zone. He drove in the oncoming lane of traffic for one-half to three-quarters of a mile. He crossed the fog line by half a car width three times. RP Trial Day 1 at 50-53. Although traffic was light to

nonexistent at that time of night, Deputy Shannon felt Mr. Hunter's driving was reckless. RP Trial Day 1 at 53.

No other law enforcement was in the area to provide assistance. RP Trial Day 1 at 53. Officer Royle accessed Department of Licensing records through the patrol car's in-car computer. The license plate returned to a car registered to Mr. Hunter. The driver license photo for Mr. Hunter was the person the officers contacted near Morton. RP Trial Day 1 at 52.

Deputy Shannon's sergeant called off the pursuit when it approached Packwood. RP Trial Day 1 at 53-54. The officers had no further contact with Mr. Hunter.

Mr. Hunter testified he found himself on an unfamiliar stretch of highway near Morton. RP Trial Day 1 at 83. He had been at the beach at Westport earlier in the day. RP Trial Day 1 at 82. He removed some clothing after it got wet. RP Trial Day 1 at 87. He was essentially living in his car. RP Trial Day 1 at 81, 87. He often camped near Mt. Rainer and was returning to that area from the beach. RP Trial Day 1 at 82. He noticed a car had been following him for some time. RP Trial Day 1 at 83. The car's lights were off. RP Trial Day 1 at 83. He pulled to the side of the road to try and charge his phone. RP Trial Day 1 at 83.

When the car passed him it turned its lights on. He realized it was a sheriff's car and felt relieved. RP Trial Day 1 at 83. He pulled out behind the car. RP Trial Day 1 at 84. He used his blinker and had his lights on. RP Trial Day 1 at 84.

As he came up to a stop sign, there was a fire in his car. RP Trial Day 1 at 86, 102. He accidentally ignited a propane torch under his seat as he was trying to put on shoes. RP Trial Day 1 at 86-87, 103. He took his pants off in the car because they were on fire. RP Trial Day 1 at 87, 101, 104, 110. A blanket was also burned. RP Trial Day 1 at 103.

The fire caused him to hit the gas and the brake simultaneously and he knew it must have looked erratic. RP Trial Day 1 at 87, 104. After driving through a stop sign, he saw the now-parked police car. RP Trial Day 1 at 87. He drove up a short hill and pulled over. RP Trial Day 1 at 88. The police car came up behind him with its sirens blaring. RP Trial Day 1 at 89, 112. Deputy Shannon came up next to him while he was standing outside his car. RP Trial Day 1 at 89, 92. She asked if he was okay. RP Trial Day 1 at 90. He told her he was. He said his name was Josh, he was sober, and he lived in Yakima. RP Trial Day 1 at 90. Officer Royle was standing at the back of his car. RP Trial Day 1 at 91.

Deputy Shannon asked him what was going on. RP Trial Day 1 at 91. He told Deputy Shannon he felt like he was having a supernatural

experience. RP Trial Day 1 at 92. He answered all of her questions. RP Trial Day 1 at 92. She said she wanted to help him and was getting him a blanket. RP Trial Day 1 at 92. He offered to put his pants on. RP Trial Day 1 at 92. She said no and he sat back in his car. RP Trial Day 1 at 92. He was embarrassed to be naked as he is naturally modest. RP Trial Day 1 at 88.

Deputy Shannon asked him if he was on good terms with God and he said he was. RP Trial Day 1 at 93. He sat in his car with the door closed. Deputy Shannon opened the door. He was getting out with his hands up, still naked, when Officer Royle tased him for no reason. RP Trial Day 1 at 94. Deputy Shannon had not commanded him to get out of the car before he was tased. RP Trial Day 1 at 94.

The tasing paralyzed him. RP Trial Day 1 at 95. He fell back into the car screaming "God, why are you doing this to me." The officers continued to light him up with tasers. RP Trial Day 1 at 95. He closed his car door and took off. RP Trial Day 1 at 95. He was not trying to get away from the police as much as he was afraid they would kill him if he stopped. RP Trial Day 1 at 95. He was scared for his life. RP Trial Day 1 at 96-97.

He drove no more than 40 miles per hour as the police car followed with its lights on. RP Trial Day 1 at 96, 114. His car, a 1995

Chevy, had close to 300,000 miles on it. He paid just \$500 for it. RP Trial Day 1 at 97. He prayed he would see another police car so he could pull over for help. RP Trial Day 1 at 96. He passed a couple of cars on Highway 12 that were going in the opposite direction. RP Trial Day 1 at 96. Although he drove in the oncoming lane there was no traffic when he did so. RP Trial Day 1 at 98. He did safely pass a Milky Way truck in his lane as he started up White Pass toward Yakima. RP Trial Day 1 at 96, 99. There was very little traffic. The police followed him for at least 30 miles and maybe as many as 60 miles. RP Trial Day 1 at 98-99, 116. He stopped at a camping area. RP Trial Day 1 at 100. He never pulled over because he thought Deputy Shannon and Officer Royle would kill him. RP Trial Day 1 at 100. He had not consumed any drugs or alcohol that day. RP Trial Day 1 at 82.

Over the next two weeks, he reported to six different places about what happened. RP Trial Day 1 at 116.

3. Request to self-represent

The evidence in the case concluded with Mr. Hunter's testimony. Trial Day 1 at RP 81-117. The court dismissed the jury for the night and discussed jury instructions with counsel. RP Trial Day 1 at 118.

The next morning, the court asked for objections and exceptions to the jury instructions. Mr. Hunter remarked he had not seen the

instructions. The court told him he could follow them when the court was reading them to the jury. RP Trial Day 2 at 128. Mr. Hunter asked if he would have the opportunity to personally cross examine witnesses. RP Trial Day 2 at 128. The court explained defense counsel did the cross examination. RP Trial Day 2 at 128. Mr. Hunter was concerned that his counsel had not asked the witnesses questions “pretty vital to [his] case.” RP Trial Day 2 at 129. The following exchange then occurred:

MR. HUNTER: Okay. Will I get to present my own closing argument?

THE COURT: No. Your attorney is going to do that.

MR. HUNTER: Okay. I would like to fire my attorney, --

THE COURT: Well, you don’t have that –

MR. HUNTER: -- represent myself.

THE COURT: No. We’re not going to do that. We’re not going to do that now in the middle of this trial.

MR. HUNTER: I’ve been trying to do this from the beginning.

THE COURT: I understand, and that request has been denied throughout. It’s been denied when you tried to fire him earlier. It was denied at the beginning of this case. So, no, we’re not going to do that. All right? Do you understand that?

MR. HUNTER: No, I don’t understand. I thought I had the right to cross-examine witnesses against me.

THE COURT: You’re right, you do, and that happened through your attorney.

MR. HUNTER: He didn't.

THE COURT: Yes, he did. He asked the questions.

MR. HUNTER: He didn't – he did not ask the questions that I –

THE COURT: He may not have asked the questions you wanted. There are –

MR. HUNTER: Well –

THE COURT: Okay. I'm not going to have this argument with you, Mr. Hunter. Listen to me. Listen to me. Your attorney knows what he is doing. There are questions that can be asked. There are questions that cannot be asked. There are reasons for those questions that he asked. There are reasons why, there are rules that prohibit certain questions from being asked.

RP Trial Day 2 at 129-30.

One time previously, on April 3, when the case was called ready for trial, Mr. Hunter asked for a new attorney. He told the court his defense counsel was not representing him to his fullest ability and that he was hard to contact. RP April 3, 2014 at 2-3. The court denied the request. RP April 3, 2014 at 3.

At the start of trial, Mr. Hunter again told the court he did not think his attorney was representing him to the best of his ability. RP Trial Day 1 at 18. The court encouraged Mr. Hunter to listen to his attorney. RP Trial Day 1 at 18. Mr. Hunter did not ask for a new attorney during that discussion. RP Trial Day 1 at 18.

Defense counsel represented Mr. Hunter through the rest of trial and at sentencing. RP Trial Day 1 and 2; RP Sentencing.

4. Proposed duress instruction

Mr. Hunter proposed the following duress instruction. RP Trial Day 1 at 122; Supplemental Designation of Clerk's Papers, Defendant's Proposed Jury Instructions (sub. nom. 34).

Duress is a defense to a charge of Attempting to Elude a Police Vehicle if:

(a) The defendant participated in the crime under compulsion by another who by threat or use of force created an apprehension in the mind of the defendant that in case of refusal the defendant would be liable to immediate death or immediate grievous injury; and

(b) Such apprehension was reasonable upon the part of the defendant; and

(c) The defendant would not have participated in the crime except for the duress involved.

The defense of duress is not available if the defendant intentionally or recklessly placed himself in a situation in which it was probable that he would be subject to duress.

The defendant has the burden of proving this defense by a preponderance of the evidence. Preponderance of the evidence means that you must be persuaded, considering all the evidence in the case, that it is more probably true than not true. If you find that the defendant has established this defense, it will be your duty to return a verdict of not guilty as to this charge.³

³ WPIC 18.01

The court refused to give the instruction. It found Mr. Hunter created the need to flee when he failed to comply with the officers and escalated the encounter. RP Trial Day 1 at 123-24.

5. Disputed criminal history

At sentencing, Mr. Hunter disputed only the first and second convictions on the state's proposed criminal history. RP Sentencing⁴ at 2; CP 8. Mr. Hunter believed a February 14, 1999, DUI was actually sentenced as a Reckless Driving and a February 10, 1999, Reckless Driving was reduced to a non-scoring negligent driving. RP Sentencing at 2-3, 6. If this were accurate, his offender score would be reduced from eight points to seven points. CP 6.

To support its proposed criminal history, the state provided the court with two certified documents: (1) Mr. Hunter's Yakima County Judgment and Sentence under cause number 99-1-00267-4, and (2) Mr. Hunter's State of Washington Department of Licensing driving record. Supp. DCP Sentencing Exhibits 2 and 3, respectively. Exhibit 2 indicated Mr. Hunter was convicted of DUI for a February 14, 1999, incident. Exhibit 3 indicated a February 10, 1999, incident date for a Reckless Driving conviction reduced from an original charge of DUI.

⁴ Sentencing was heard on May 6, 2014.

Mr. Hunter did not object to the admission of the exhibits. RP Sentencing at 5. Mr. Hunter did not provide the court with any sentencing exhibits. RP Sentencing at 2-6.

The court held the state proved the DUI and Reckless Driving were separate convictions and included both as separate scoring points in the offender score calculation. RP Sentencing at 6; CP 8.

D. ARGUMENT

THE TRIAL COURT VIOLATED MR. HUNTER'S RIGHT TO REPRESENT HIMSELF BY SUMMARILY DENYING HIS UNEQUIVOCAL REQUEST.

A criminal defendant has an independent state and federal constitutional right to represent himself. *State v. Coley*, 180 Wn.2d 543, 560, 326 P.3d 702 (2014). The Washington State Constitution explicitly states this right. Art. I, § 22 provides that “the accused shall have the right to appear and defend in person.” The implicit federal constitutional right is recognized in case law. *See Faretta v. California*, 422 U.S. 806, 807, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975) (holding that the United States Constitution's Sixth Amendment right to counsel contains a corollary right to self-representation). “This right is so fundamental that it is afforded despite its potentially detrimental impact on both the defendant and the administration of justice.” *State v. Madsen*, 168 Wn.2d 496, 503, 229 P.3d 714 (2010). The state constitutional right is absolute and violation is

reversible error. *State v. Stenson*, 132 Wn.2d 668, 737, 940 P.2d 1239 (1997).

The trial court in Mr. Hunter's case committed reversible error by denying Mr. Hunter's request to represent himself because (1) Mr. Hunter's request was not designed to delay the trial and (2) the court summarily denied the motion without first exercising its discretion.

The controlling facts in deciding a defendant's motion to represent himself are whether the motion is knowing, unequivocal, and timely, that is, not exercised merely for a dilatory purpose. *State v. Breedlove*, 79 Wn. App. 101, 106, 900 P.2d 586 (1995).

a. *Mr. Hunter's request was unwavering.*

Mr. Hunter's request was unequivocal. Mr. Hunter expressed his dissatisfaction with counsel and did not request appointment of a new counsel. Instead, he simply said he wanted to represent himself. RP Trial Day 2 at 129.

That Mr. Hunter may have been motivated to represent himself by dissatisfaction with counsel makes his request no less unequivocal. A clear request to proceed pro se does not become equivocal simply because the defendant is motivated by more than the single desire to present his own defense. *State v. Modica*, 136 Wn. App. 434, 442, 149 P.3d 446 (2006). Mr. Hunter's statements are distinguishable from cases in which

defendants were found to have been equivocal in the alleged pro se motions. *See, e.g. State v. Woods*, 143 Wn.2d 561, 587, 23 P.3d 1046 (2001) (telling trial judge he “will be prepared to proceed without counsel” in frustration with counsel’s request for an eight-month trial continuance found to be mere expression of displeasure with his lawyer’s request for a lengthy continuance); *State v. Garcia*, 92 Wn.2d 647, 653, 600 P.2d 1010 (1979) (defendant who complained about attorney’s performance and stated he did “not wish to have the attorney with me” was found to have asked for a new lawyer, not to proceed pro se).

b. Any ambiguity in whether Mr. Hunter knowingly sought to proceed pro se was solely attributable to the trial court.

A valid waiver of the constitutional right to counsel must be made knowingly, voluntarily, and intelligently. *City of Tacoma v. Bishop*, 82 Wn. App. 850, 855, 920 P.2d 214 (1996). The favored method for determining whether a defendant validly waives the right to counsel is for the trial judge to question the defendant on the record to ensure he knows the risks of self-representation, the seriousness of the charges, the rules to be applied to the presentation of evidence and argument, and the maximum possible punishment upon conviction. *State v. Lilliard*, 122 Wn. App. 422, 427-28, 93 P.3d 969 (2004), *review denied*, 154 Wn.2d 1002 (2005).

Absent such a colloquy, the record must otherwise show the defendant appreciated the seriousness of the charges, knew the possible maximum penalty, and was made aware of the technical rules governing the presentation of evidence and argument at trial. *Bellevue v. Acrey*, 103 Wn.2d 203, 211, 691 P.2d 957 (1984). “[O]nly rarely will adequate information exist on the record in the absence of a colloquy, to show the required awareness of the risks of self-representation.” *Acrey*, 103 Wn.2d at 211.

Mr. Hunter’s case is rare. He had twice previously been convicted of Attempting to Elude and once for Driving Under the Influence. CP 8. The record sufficiently shows Mr. Hunter understood the seriousness of the charges and possible punishment.

Less clear is whether Mr. Hunter recognized the need to know technical rules for the conduct of his trial. It may be reasonably inferred that Mr. Hunter was generally aware of the justice system in Washington given his criminal history spanning from 1999 to 2009. CP 8. In moving to self- represent, Mr. Hunter said he thought he would personally have an opportunity to cross examine state’s witnesses and present closing argument. While this is not accurate for a defendant represented by counsel, it told the court Mr. Hunter had thought about asking witnesses

specific questions as well as presenting his own closing argument. In short, he was prepared to self-represent.

Mr. Hunter should not be punished because the absence of a proper record is attributable solely to the trial court's refusal to engage Mr. Hunter in a colloquy. The trial judge immediately concluded Mr. Hunter's request was untimely and dispensed with the requirement of an on-the-record colloquy. Furthermore, a defendant who desires to proceed pro se "need not demonstrate technical knowledge of the law and the rules of evidence." *State v. Vermillion*, 112 Wn. App. 844, 851, 51 P.3d 188 (2002).

The trial court's snap judgment was erroneous. This court reviews a trial court's denial of a request to proceed pro se for an abuse of discretion. *Vermillion*, 112 Wn. App. at 855. The failure to exercise discretion is itself an abuse of discretion. *State v. Garcia-Martinez*, 136 Wn. App. 322, 330, 944 P.2d 1104 (1997), *review denied*, 136 Wn.2d 1002 (1998).

Here the trial court refused to exercise its discretion and instead categorically refused to consider Mr. Hunter's request by concluding it was not timely. As the following section shows, this was not the proper procedure.

- c. *Mr. Hunter's request was sufficiently timely and not offered for dilatory purposes.*

In addition to being unequivocal, knowing, and voluntary, motions to proceed pro se must be timely made. In determining whether a request is timely, the trial court's discretion lies along a continuum corresponding to the time between the request and the start of the trial and is expressed as follows.

The cases that have considered the timeliness of a motion to proceed pro se have generally held: (a) if made well before the trial or hearing and without an accompanying request to continue, the right of self-representation stands as a matter of law; (b) if made as the trial or hearing is about to begin or shortly before, the trial court retains a measure of discretion to be exercised after considering the particular circumstances of the case; and (c) if made during the trial or hearing, the right to proceed pro se rests largely in the informed discretion of the trial court. *State v. Fritz*, 21 Wn. App. 354, 361, 585 P.2d 173 (1978), *review denied*, 92 Wn.2d 1002 (1979).

Furthermore, the timeliness analysis is tied to the question of whether the defendant sought to exercise his right for the purpose of delaying the court proceedings. The right to proceed pro se may not be

used for the purpose of delay or obstructing justice. *Vermillion*, 112 Wn. App. at 851.

If a request for self-representation is made “shortly before trial, at the beginning of trial, or mid-trial,” a trial court properly exercises its discretion by “balancing the important interests implicated by the decision: the defendant’s interest in self-representation and society’s interest in the orderly administration of justice.” *Breedlove*, 79 Wn. App. at 107.

Mr. Hunter made his request after the evidence was presented but before closing argument. RP Trial Day 2 at 129. The following therefore applies:

When such a midtrial request for self-representation is presented the trial court shall inquire sua sponte into the specific facts underlying the request thereby ensuring a meaningful record in the event that appellate review is later required. Among other factors to be considered by the court in assessing such requests made after the commencement of trial are the quality of counsel’s representation of the defendant, the defendant’s prior proclivity to substitute counsel, the reasons for the request, the length and state of the proceedings, and the disruption or delay which might reasonably be expected to follow the granting of such a motion. Having established a record based on such relevant considerations, the court shall then exercise its discretion and rule on the defendant’s request.

Fritz, 21 Wn. App. at 363 (quoting *People v. Windham*, 19 Cal.3d 121, 128-29, 560 P.2d 1187, 1191-92, 137 Cal.Rptr. 8, cert. denied, 434 U.S. 848 (1977)).

Fritz was decided over 35 years ago and remains good law. The trial court nevertheless applied none of the factors set forth in that case. Nor did it sua sponte or otherwise ensure a “meaningful review” would be preserved in the event of appellate review. Appellate review is now and there is no record, much less a “meaningful” one, to assist this court in reviewing the trial court’s ruling.

Furthermore, an important question in determining timeliness is whether the defendant requests more time to prepare for trial. *See Vermillion*, 112 Wn. App. at 856 (in reversing trial court’s denial of defendant’s request to present his own case, appellate court noted defendant “did not request that the trial be continued on any of the occasions that he renewed his motion. There is no indication in the record that Vermillion made his request for the purpose of delaying trial.”); *Stenson*, 132 Wn.2d at 770 (strong evidence request to proceed pro se is made for dilatory purposes when it is accompanied by a motion to continue), *cert denied*, 523 U.S. 1008 (1998); *United States v. Price*, 474 F.2d 1223, 1227 (9th Cir. 1973) (trial court abused its discretion by refusing to permit defendant to proceed pro se where the “motion was made before the jury was sworn, the record contains no hint that the motion was a tactic

to secure delay, and there is nothing that suggests that any delay would have attended the granting of the motion.”)

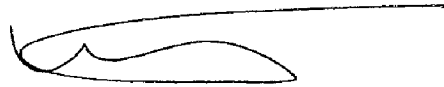
Mr. Hunter requested no additional time to prepare for closing argument. Mr. Hunter simply wanted to present his own closing argument. The evidence at trial had not been complex. The jury heard testimony only from Deputy Shannon, Officer Royle, and Mr. Hunter. The whole of testimony only took part of a day. RP Trial Day 1.

“Washington courts have recognized that the timeliness requirement should not operate as a bar to a defendant’s right to defend pro se[.]” *Breedlove*, 79 Wn. App. at 109. Mr. Hunter’s request was timely. The trial court failed to consider Mr. Hunter’s request because it immediately found it was untimely. “No. We’re not going to do that. We’re not going to do that now in the middle of this trial.” RP Trial, Vol. 2, at 129. This was an abuse of discretion because there are no tenable grounds for the court’s ruling and the court refused to exercise its discretion. The trial court’s error requires reversal. *Stenson*, 132 Wn.2d at 737.

E. CONCLUSION

Mr. Hunter's conviction must be reversed and his case remanded to the trial court for further action.

Respectfully submitted this 15th day of December 2014.

A handwritten signature in black ink, appearing to read 'Lisa E. Tabbut', with a long horizontal stroke extending to the right.

LISA E. TABBUT/WSBA #21344
Attorney for Joshua L. Hunter

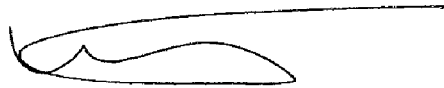
CERTIFICATE OF SERVICE

Lisa E. Tabbut declares as follows:

On today's date, I efiled the Brief of Appellant with: (1) Sara Beigh, Lewis County Prosecutor's Office, at appeals@lewiscountywa.gov; and (2) the Court of Appeals, Division II; and (3) I mailed it to Joshua L. Hunter/DOC# 805976, Airway Heights Corrections Center, PO Box 1899, Airway Heights, WA 99001-1899.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed December 15, 2014, in Longview, Washington.

A handwritten signature in black ink, appearing to read 'Lisa E. Tabbut', with a long horizontal line extending to the right.

Lisa E. Tabbut, WSBA No. 21344
Attorney for Joshua L. Hunter

COWLITZ COUNTY ASSIGNED COUNSEL

December 15, 2014 - 6:39 PM

Transmittal Letter

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Case Name: State v. Joshua L. Hunter

Court of Appeals Case Number: 46241-9

Is this a Personal Restraint Petition? Yes ☐ No

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Statement of Arrangements

Motion: _____

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Statement of Additional Authorities

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Affidavit

Letter

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Personal Restraint Petition (PRP)

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Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Lisa E Tabbut - Email: ltabbutlaw@gmail.com

A copy of this document has been emailed to the following addresses:

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